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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HERMAN RESNICK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C 07-2885 MHP

**[PROPOSED] ORDER AND MOTION
FOR EXTENSION OF TIME FOR
FILING GOVERNMENT'S ANSWER
TO DEFENDANT RESNICK'S
SECTION 2255 MOTION**

The United States of America, plaintiff, through counsel of record Scott N. Schools, United States Attorney, and Erika R. Frick, Assistant United States Attorney, hereby moves this Court to grant the government an extension of time in which to respond to Herman Resnick's Section 2255 motion, as set forth below:

1. On September 23, 2003, this Court sentenced petitioner Resnick to a prison term of 188 months for armed bank robbery, in violation of 18 U.S.C. § 2113(a) & (d). Based on a

1 government motion for downward departure based on substantial assistance, this Court later
2 reduced Mr. Resnick's sentence to 130 months. On June 4, 2007, Mr. Resnick filed a Section
3 2255 petition with this Court, requesting that the Court vacate, set aside, or correct his sentence
4 in light of an alleged denial of effective assistance of counsel.

5 2. On July 5, 2007, this Court entered an Order to Show Cause in the above-
6 captioned case, ordering the government to answer Mr. Resnick's Section 2255 motion within 60
7 days. The government calculates the current due date of its answer as Tuesday, September 4,
8 2007.

9 3. The Assistant United States Attorney who originally handled Mr. Resnick's
10 prosecution is no longer with the U.S. Attorney's Office in the Northern District of California.
11 Therefore, on or about July 16, 2007, this matter was assigned to AUSA Erika R. Frick. Upon
12 receiving this assignment, AUSA Frick and her assistant Wilson Wong commenced diligent
13 efforts to obtain a copy of Mr. Resnick's motion from the Clerk's Office and from the Court.
14 Due to the fact that the file was in transit, and also due to several employee absences, AUSA
15 Frick did not receive a copy of Mr. Resnick's motion until on or about August 21, 2007.

16 4. AUSA Frick will be out of the office and unavailable from August 25, 2007
17 through September 4, 2007, and will not have adequate time to obtain missing documents and
18 transcripts, review and research the legal and factual issues raised by Mr. Resnick's petition, and
19 respond to that petition by September 4, 2007.

20 5. Mr. Resnick has raised legal and factual issues that may require significant
21 research and the procurement of documents and information that are not readily available, such
22 as transcripts. Although my assistant has attempted to reach the six court reporters who prepared
23 the transcripts in the underlying case, many of them are currently on vacation, and it may take
24 several weeks or longer to obtain the transcripts. The government may also need to locate and
25 contact defense counsel and make other inquiries about the case. The government therefore

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requests an extension of time to file its answer until October 19, 2007.

DATED: August 24, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/
ERIKA R. FRICK
Assistant United States Attorney

ORDER

For good cause shown, it is hereby ordered that the government's date by which to answer the petitioner's Section 2255 motion is extended from September 4, 2007 to October 19, 2007, to allow sufficient time for the government to research and respond to the factual and legal allegations set forth by the petitioner.

IT IS SO ORDERED.

DATED: _____

THE HON. MARILYN HALL PATEL
United States District Court

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the office of the United States Attorney, Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned certifies that he caused copies of

**[PROPOSED] ORDER AND MOTION FOR EXTENSION OF TIME FOR FILING
GOVERNMENT'S ANSWER TO DEFENDANT RESNICK'S SECTION 2255 MOTION**

in the case of **HERMAN RESNICK v. UNITED STATES**, No. C-07-2885 MHP

to be served on the parties in this action, addressed as follows which are the last known address:

Herman Resnick
83980-011-E1/2-121
Federal Correctional Complex
Victorville One
P.O. Box 5300
Adelanto, CA 92301

____ (By Personal Service), I caused such envelope to be delivered by hand to the person or offices of each addressee(s) above.

____ (By Facsimile), I caused each such document to be sent by Facsimile to the person or offices of each addressee(s) above.

 X (By Mail), I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, California.

____ (By Fed Ex), I caused each such envelope to be delivered by FED EX to the address listed above.

I declare under penalty of perjury that the foregoing is true and correct.

August 24, 2007

_____/S/_____
WILSON WONG
United States Attorney's Office